

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

WAI`OLA O MOLOKA`I, INC.)

DOCKET NO. 2009-0049

For Review and Approval of Rate)
Increases; Revised Rate Schedules;)
And Revised Rules.)

ORDER DENYING WITHOUT PREJUDICE WAI`OLA O MOLOKA`I, INC.'S
MOTION TO DISMISS COUNTY OF MAUI AS AN INTERVENOR

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PUBLIC UTILITIES
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ORDER DENYING WITHOUT PREJUDICE WAI'OLA O MOLOKA'I, INC.'S
MOTION TO DISMISS COUNTY OF MAUI AS AN INTERVENOR

By this Order, the commission denies without prejudice WAI'OLA O MOLOKA'I, INC.'s ("WOM") Motion to Dismiss County of Maui as an Intervenor, filed February 3, 2010.

I.

Background

On July 29, 2009, WOM¹ filed its amended application ("Amended Application")² seeking additional revenues of \$473,431, or an approximate 382.85% increase,³ over the pro forma revenue amount of \$123,660.³

¹The parties to this proceeding are WOM, MOLOKAI PROPERTIES LIMITED ("MPL"), the COUNTY OF MAUI ("County"), and the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") (collectively, the "Parties").

²WOM is ultimately a wholly owned subsidiary of MPL. See Amended Application, Exhibit WOM 2, Schedule 2.

³On June 16, 2008, the commission, on its own motion, initiated Docket No. 2008-0115 to consider temporary rate relief for MPL's public utilities (i.e., WOM, Molokai Public Utilities, Inc. ("MPU"), and Mosco, Inc.) following MPL's announcement that

On September 11, 2009, the County of Maui timely filed its Motion to Intervene in this proceeding ("County's Motion to Intervene").⁴ On October 16, 2009, the commission granted the County's Motion to Intervene.⁵

The Parties to this proceeding conducted discovery, consistent with the Order Approving Proposed Procedural Order, as Modified ("Procedural Order") issued on November 6, 2009.

On January 13, 2010: (1) the Consumer Advocate filed its direct testimony and exhibits; and (2) the County filed its Statement Regarding Direct Testimony. In its statement, the County noted that:

. . . the County will not be submitting direct testimony in this proceeding and instead intends to establish, through cross-examination of witnesses and exhibits, that the proposed rate increases by [WOM] are unreasonable and unjust.

it would cease providing utility services within six months ("Docket No. 2008-0115"). On August 14, 2008, the commission issued its Order Approving Temporary Rate Relief for Molokai Public Utilities, Inc. and Wai'ola O Moloka'i, Inc. in Docket No. 2008-0115 approving, among other things, a temporary increase in WOM's User Charge from \$1.85 per 1,000 gallons (approved in Decision and Order No. 12125) to \$5.15 per 1,000 gallons (effective September 1, 2008, until February 28, 2009, unless ordered otherwise by the commission). Subsequently, the February 28, 2009 date was extended to August 2009 or until the commission rules on the general rate increase applications filed by MPU and WOM. See Order Approving Extension of Temporary Rate Relief and Request for an Extension to File General Rate Case Applications, filed on February 24, 2009, in Docket No. 2008-0115.

⁴On September 18, 2009, WOM filed a Memorandum in Opposition to County of Maui's Motion to Intervene.

⁵See Order Granting the Motions to Intervene Filed by the County of Maui and Stand For Water ("Intervention Order").

On February 3, 2010, WOM filed its Motion to Dismiss County of Maui as an Intervenor.⁶ On February 10, 2010, the County filed its Memorandum in Opposition to Motion to Dismiss County of Maui as an Intervenor ("County's Opposition").

A.

WOM's Motion

In support of its motion, WOM contends:

1. The County has attempted to unreasonably broaden the issues by submitting overly broad and irrelevant information requests to WOM. As one example, the County has issued information requests on a proposed issue that was specifically rejected by the commission.

2. The County has failed to contribute to the development of a sound record and to meaningfully participate in this proceeding by failing to file any direct testimony.

According to WOM:

Because the County refused to file direct testimony, WOM is foreclosed from "Submission of IRs to [the County] on Direct Testimonies and Exhibits" in accordance with the Stipulated Regulatory Schedule incorporated in the Procedural Order. Further, WOM does not have any way of knowing which components of the rate proposal the County has objections to, thereby precluding settlement discussions and the ability to narrow the issues prior to hearing.

⁶Motion to Dismiss County of Maui as an Intervenor; Memorandum in Support of Motion ("WOM's Memorandum in Support"); and Certificate of Service, filed on February 3, 2010, and Amended Certificate of Service, filed on February 4, 2010 (collectively, "WOM's Motion").

More importantly, . . . "[w]ithout . . . timely direct testimonies and exhibits, [the County] has failed to present any evidence or arguments to which WOM may have the opportunity to rebut as part of the water utility's forthcoming rebuttal testimonies and exhibits."

WOM's Memorandum in Support, at 3-4 (brackets and quotes in original; and citation, footnote, and text therein omitted).

3. The County's continuing status as an intervenor will likely result in a protracted hearing and cause undue delay of the proceeding.

B.

County's Opposition

In opposition, the County argues that WOM's Motion should be denied. In support thereto, the County asserts:

1. The County has not broadened the issues. Instead, the County's information requests to WOM and MPL are relevant and have focused on issues identified by the commission in its Procedural Order.

2. The County's decision not to file direct testimony was based solely to save its resources for the evidentiary hearing, is not improper, and does not violate any commission rule or order. "The County has a right to participate in this proceeding and has the right to conduct cross-examination 'as may be required for a full and true disclosure of the facts.'" Moreover, the County does not intend to call any "surprise" witnesses at the evidentiary hearing as part of its direct case.

⁷See County's Opposition at 6 (quoting from HAR § 6-61-33).

In addition, since its position is based largely on legal principles rather than on disputed facts, "the County determined that no written direct testimony was necessary, and issues related to the reasonableness of the rate increases could be adequately addressed through cross-examination."⁸

3. In Docket No. 2008-0115, the commission and the Consumer Advocate appeared to take the position that the County could be forced to acquire WOM, and the County is the only entity that has been identified as having any potential responsibility in the event WOM shuts down. Thus, the County's participation as an intervenor is necessary to protect its interests and is critical to developing a sound record.

4. WOM was not precluded from serving information requests upon the County.

II.

Discussion

In its Intervention Order, the commission granted the County's Motion to Intervene on the condition that the County's participation would be limited to the issues raised in this docket, and stated that the commission would reconsider the County's intervention in this docket if, at any time during the course of this proceeding, the commission determines that the County is unreasonably broadening the pertinent issues or unduly

⁸Id. at 7.

delaying the proceeding.⁹ In addition, the commission required the County to follow the commission's rules and requirements.

Here, the commission is mindful that the County's lack of action in filing any direct testimonies or exhibits appears contrary to its representations in support of its Motion to Intervene that it would be: (1) unable to directly advocate its interests in this proceeding unless it was "permitted to intervene and submit the documents, testimony, and arguments necessary to present its position to the PUC[;]"¹⁰ and (2) "able to provide much-needed context to the underlying issues which form the bases for . . . [WOM's] request[] for a rate increase."¹¹ Nonetheless, the commission's underlying basis for allowing the County to intervene in Docket No. 2009-0049 was that "the County has an interest in ensuring that its citizens have access to basic water and wastewater services."¹² Moreover, the commission, in Docket No. 2008-0115, openly requested that the County be ready to take over WOM's water utility operations in the event that WOM eventually discontinues its provision of water utility service.

Accordingly, in this specific instance, the commission finds that the County's decision not to file any direct testimonies or exhibits in support of its case, and instead, rely on its forthcoming cross-examination of the other parties'

⁹See Intervention Order at 20-21.

¹⁰See County's Motion to Intervene at 9.

¹¹Id. at 11.

¹²See Intervention Order at 13.

witnesses, does not warrant its dismissal as an intervenor at this time. Rather, such a decision goes to the weight of the County's direct case. In reaching this ruling, the commission also: (1) relies on the County's representations that it does not intend to call any "surprise" witnesses at the evidentiary hearing as part of its direct case, thereby precluding the potential to unreasonably broaden the issues in this docket or unduly delay the proceeding; and (2) notes that MPL, which the commission named as a party over its objections, also did not submit any direct testimonies or exhibits. Based on the foregoing, the commission, at this time, denies WOM's Motion without prejudice.¹³

¹³The commission's previous action of dismissing, on its own motion, STAND FOR WATER ("SFW") as an intervenor is readily distinguishable from its decision herein of not dismissing the County as an intervenor. The commission, in finding that SFW had failed to contribute to the development of a sound record, meaningfully participate in this proceeding, or follow the commission's orders and directives, noted with specificity SFW's failure to adhere to the commission's deadlines and directives. Of particular note:

The deadline for SFW to file its direct testimonies and exhibits was January 8, 2010. SFW did not file any direct testimonies or exhibits, notwithstanding the fact that in its motion to intervene, which formed the basis for the commission's decision to grant SFW intervenor status, SFW listed seven "expert" witnesses on its behalf. Without SFW's timely direct testimonies and exhibits, SFW has failed to present any evidence or arguments to which WOM may have the opportunity to rebut as part of the water utility's forthcoming rebuttal testimonies and exhibits.

Order Dismissing Stand for Water as an Intervenor, filed on January 27, 2010, at 3 (footnote and text therein omitted; emphasis added). Contrary to SFW's situation, the commission reiterates that the underlying basis for allowing the County to intervene in Docket No. 2009-0049 was that "the County has an

The commission, however, will direct the County to participate in good faith in any settlement discussions or negotiations initiated by one or more of the parties. WOM claims that it is precluded from pursuing settlement discussions due to the County's "refusal" to file direct testimony. In response, the commission notes that its denial of WOM's motion without prejudice shall not preclude the County's good faith efforts in participating in any settlement discussions or negotiations initiated by one or more of the Parties.

III.

Orders

THE COMMISSION ORDERS:


1. WOM's Motion to Dismiss County of Maui as an Intervenor, filed on February 3, 2010, is denied without prejudice.

2. The County, in good faith, shall participate in any settlement discussions or negotiations initiated by one or more of the Parties.

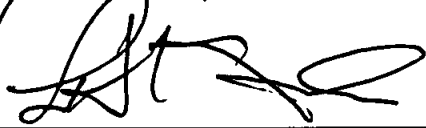
interest in ensuring that its citizens have access to basic water and wastewater services." See Intervention Order at 13.

DONE at Honolulu, Hawaii MAR - 8 2010

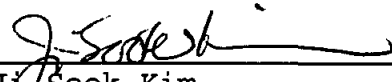
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2009-0049.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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